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Before the
Federal Communications Commission
 Washington, D.C. 20054

AUG - 2 2004

Federal Communications Commission
 Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-219
Table of Allotments)	RM-10986
FM Broadcast Stations)	
(Evergreen, Alabama and Shalimar, Florida))	

**COMMENTS OF QANTUM OF FT. WALTON
 BEACH LICENSE COMPANY, LLC**

Quantum of Ft. Walton Beach License Company, LLC ("Quantum"), by its attorneys, hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* in the above captioned proceeding, 19 FCC Rcd. 10208 (2004) ("Notice"). As is set forth in detail below, the proposal outlined in the *Notice* is contrary to the public interest inasmuch as it would withdraw service from an area that would become underserved as a result. In addition, the proposal does not represent a preferential arrangement of allotments inasmuch as it would remove the sole FM service at Evergreen – a county seat with a population of 3,630 - in favor of Shalimar, Florida, a town of only 718 people within the Fort Walton Beach Urbanized Area. As a result, the proposed rule making should not be adopted.

I. Background

The *Notice* is a result of a petition for rule making ("Petition") filed on August 20, 2003, by Gulf Coast Broadcasting Company, Inc. ("Gulf"), licensee of station WPGG(FM), Channel 227C1, Evergreen, Alabama. Gulf seeks, and the *Notice* proposes, the downgrading of Channel 227C1 to Channel 227C2 and the reallotting of Channel

227C2 from Evergreen, Alabama, to Shalimar, Florida. Gulf then proposes to make Shalimar the WPGG community of license. Gulf proposes this reallocation pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd. 4870 (1989), *recon. granted in part*, 5 FCC Rcd. 7094 (1990) ("Change of Community MO&O").

II. The Reallocation of Channel 227C2 Will Cause the Withdrawal of Reception Service in Evergreen and Create New Underserved Areas.

In order to meet the Commission's spacing requirements while also providing the requisite city-grade service over Shalimar, Gulf proposes reference coordinates that are some 76 miles from WPGG's licensed coordinates. In addition, Gulf must downgrade WPGG from Class C1 to Class C2. The relocation of the facilities coupled with their downgrading results in a situation where there is no overlap between the 60 dBu contour that would be achieved from the proposed reference coordinates and WPGG's present 60 dBu contour.

By so radically altering the WPGG facilities, Gulf will be withdrawing service from 97,195 people. Of these, 9,062 people (i.e., nearly 10 percent) would receive fewer than five full-time services if the proposal is adopted. *See Technical Comments of Graham Brock, Inc. ("Technical Comments")*, attached hereto. Specifically, more than 722 persons would lose their fourth service, while 8,340 people would lose their fifth service. The Commission has consistently held that such losses in service are *prima facie* inconsistent with the public interest and require a strong showing of countervailing

factors. See *West Michigan Telecasters, Inc.*, 22 FCC.2d 943 (1970), *recon. denied*, 26 FCC.2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc.*, 460 F. 2d 883 (D.C. Cir. 1972); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964). Gulf has not met this burden.

Gulf states in its Petition that WPGG's licensed 60 dBu contour serves a population of 95,599 whereas WPGG would serve a population of 222,040 within its 60 dBu contour under its proposal. Implicit in this assertion is the claim that the proposal is in the public interest because it would provide additional service to more people than would lose service. However, such a claim ignores the fact that, as is set forth in the attached *Technical Comments*, the gain area already receives service from a minimum of five full-time stations and is thus deemed to be well-served. As a result, there is no public interest benefit arising from the proposal that would outweigh the severe harm inflicted upon the public through the proposed withdrawal of service. For this reason alone, the proposal must be rejected.

III. The Proposal would not Achieve a Preferential Arrangement of Allotments.

Moreover, the proposal would not achieve a preferential arrangement of allotments. As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC2d 88, 91 (1982). Gulf seeks approval of its reallocation proposal on the ground that the proposal would provide the first local aural transmission service to Shalimar and thus is theoretically preferable to continued treatment of WPGG as a second station serving Evergreen.

In point of fact, however, the real effect of the proposal is to permit the relocation of a station from a rural area to a well-served larger metropolitan area – and to deprive listeners of service in the rural area as a result. In adopting Section 1.420(i), the Commission acknowledged the potential for this type of abuse, but assured the public, and in so doing provided a warning to broadcasters, that it would not sanction reallocations that would not be fair, equitable and efficient pursuant to Section 307(b) of the Communications Act. *Change of Community MO&O*, paras. 13, 14.

The Gulf proposal is exactly the type of reallocation that led the Commission to issue its warning concerning abusive reallocations. Evergreen is the county seat of Conecuh County, Alabama (population 14,089). According to the 2000 U.S. Census, it has a population of 3,630. Shalimar, by comparison, is a small town with a population of 718 and is separated from Fort Walton Beach, Florida, the principal city of the Fort Walton Beach Urbanized Area, by only three miles. Unlike Evergreen, Shalimar is not the county seat of its county. Nevertheless, Gulf would have the Commission relegate Evergreen to second class status by leaving it with only a single AM station, while providing Shalimar, a community one-fifth its size, with a C2 FM station even though Shalimar receives service from numerous full-service stations.

Although the provision of a community's first local transmission service can provide a public interest benefit outweighing the loss of transmission service at the station's former community of license, that is not the case when the new community of license is intertwined with the urbanized area in such a way that it would confound logic to treat a proposal as legitimately providing first transmission service to the new community of license. Indeed, the Commission has recognized that a proponent is not to

be given credit for providing first local transmission service if the new community of license is within an urbanized area unless the proponent can demonstrate that the proposed new community of license is sufficiently independent of the urbanized area under the factors set forth in *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988) (“Tuck”). Applying those factors in the present case, it is clear that Gulf cannot be credited with providing first local transmission service to Shalimar and that, as a result, Channel 227C1 must continue to be allocated to Evergreen.

A. Shalimar is Dependent on the Fort Walton Urbanized Area.

In *Tuck*, the Commission detailed the factors to be used to assess the independence of a smaller community from the larger urbanized area. Of particular importance is the interdependence between the proposed community of license and the major community of the urbanized area. Applying the factors set forth in *Tuck*, it is clear that Shalimar is interdependent with the Fort Walton Beach Urbanized Area and that, as a result, the Gulf proposal cannot be credited with providing first local transmission service to Shalimar:

1. The Perceptions of Shalimar Residents are Not Represented by a Non-Resident.

Gulf provides a long history of Shalimar in its *Petition* and a statement from the Town Manager in its *Comments* (filed July 16, 2004) in alleged support of its claim that Shalimar is independent of Fort Walton Beach. The Town Manager, a full-time employee of the Town of Shalimar, admits, however, to living outside the incorporated boundary of Shalimar. He may consider himself to be a resident of Shalimar but he does not live within the incorporated boundary of Shalimar. The Town Manager’s declaration is the sole evidence provided by Gulf attesting to the perceptions of town leaders and residents that Shalimar is not part of the Fort Walton Beach Urbanized Area. Not only is

this statement insufficient evidence that Shalimar is independent of the Fort Walton Beach Urbanized Area, but the very fact that the Town Manager himself lives outside the Shalimar city limits in and of itself provides evidence of the interdependence between Shalimar and the rest of the Ft. Walton Beach Urbanized Area.

2. The Residents of Shalimar May Not Work in Shalimar.

Gulf states that Shalimar is a net importer of workers, which should be expected given the fact that, according to the 2000 U.S. Census, only 363 people of the 718 residents in Shalimar work for a living. The large majority of Shalimar residents are retired. The town web site notes that the population of Shalimar is likely to remain at the current level because of the limited available housing. See www.shalimarflorida.org.

Interestingly, Gulf fails to state the number of Shalimar residents that work in Shalimar. This is not surprising considering that jobs for each city or town in the Fort Walton Beach Urbanized Area are advertised in the Fort Walton Beach daily newspaper known as the *Northwest Florida News*. This indicates the regional nature of the Fort Walton Beach Urbanized Area because residents may choose to seek jobs in other neighboring cities and towns.

3. Shalimar depends on the Fort Walton Beach Urbanized Area for media that covers Shalimar's local needs, interests and advertising.

There are no dedicated media outlets in Shalimar. The Town of Shalimar has a web site at www.shalimarflorida.org which primarily consists of government notices and Shalimar's history. Shalimar's web site does not contain advertising or an area for residents to discuss current events or to post classified ads.

Since Shalimar has no dedicated media outlets, Shalimar businesses advertise their services using media outlets from the Fort Walton Beach Urbanized Area. There

are dozens of AM and FM radio stations in the Fort Walton Beach Urbanized area that provide a service to Shalimar. A number of these stations are located less than five miles away from Shalimar in Fort Walton Beach.

Shalimar businesses also advertise using television stations licensed to other markets in the Fort Walton Beach Urbanized Area. Cable television service is provided to Shalimar by Cox Cable of Fort Walton Beach. DirecTV provides satellite service to Shalimar which includes the local television signals of the stations located in the Mobile, AL - Pensacola, FL geographical area.

There are no daily or weekly newspapers operating in Shalimar. Shalimar is served by newspapers from the Fort Walton Beach Urbanized Area. Such newspapers include the *Northwest Florida News* in Fort Walton Beach, *The Destin Log* and *The Crestview News Bulletin*. The *Northwest Florida News* contains advertising, classified ads, legal notices and local news for Shalimar and the entire Fort Walton Beach Urbanized Area.

4. Shalimar has only a part time elected government. Shalimar relies on the Fort Walton Beach Urbanized Area for numerous municipal services.

Shalimar operates under a Mayor/Commission form of government with five unpaid members. Elections occur in odd numbered years and the Mayor is elected to a two year term. The Commissioners serve four year terms with two Commissioners elected every two years. However, the Mayor and Commissioners are only part time positions and they must be located by their staffs if their assistance is required by a resident.

Although Shalimar Elementary School and Megis Middle School are both located in the town of Shalimar, Choctawhatchee High School, which is the high school used by Shalimar's residents, is located in Fort Walton Beach.

According to web site for the town of Shalimar, the Official Emergency Alert Stations in "our area" broadcast flood and hurricane information on the following frequencies: 1260AM, 99.5 FM, 96.5 FM and 105.5 FM. All are stations located in the Fort Walton Beach Urbanized Area that provide coverage to Shalimar. Emergency shelters are provided by Okaloosa County, not Shalimar, in Crestview, FL and Baker, FL. See www.shalimarflorida.org.

There is no Town of Shalimar library. An independent library is available just outside of the city limits of Shalimar. Although the Town of Shalimar has a police department and a fire house, the Shalimar Police force encourages residents to leave a voicemail message when no one is available at the police station or to call the Okaloosa County Sheriff's Dispatcher. If the dispatcher is called, an Okaloosa County Sheriff, not a Shalimar police officer, will respond to the call. Shalimar relies on Okaloosa County to support its police department.

Shalimar does not contain a location to register an automobile or to obtain a driver's license. Residents must travel to Fort Walton Beach, Crestview or Niceville to obtain these services. Voter registration is limited to state and county government facilities and there is no voter registration office in Shalimar. Voter registration offices are located in Fort Walton Beach and Crestview.

Natural gas services are provided by the Okaloosa County Gas District to the residents of Shalimar. Water service is also provided by Okaloosa County to the

residents of Shalimar. Once again, the residents of Shalimar must rely on the county to provide basic services.

5. Shalimar does not have its own telephone book provided by the local telephone company.

Shalimar does not have its own telephone book provided by the telephone company. Listings for Shalimar are placed in the Fort Walton Beach telephone book.

6. Shalimar has relatively few commercial establishments and very limited health facilities and transportation systems.

Shalimar has a limited number of commercial establishments compared to the number of establishments available in the Fort Walton Beach Urbanized Area. Shalimar has no hotels or motels and tourism is limited to people stopping at the local gas station. Hotel and motel services are available throughout other towns and cities in the Fort Walton Beach Urbanized Area. There is a small medical clinic in Shalimar but residents must travel to Fort Walton Beach or Niceville, FL to reach a hospital or large treatment center. Shalimar is provided limited transportation service by a commercial bus service called The Wave but Shalimar operates no public transportation system beyond school buses. The 2000 U.S. Census indicates that only one person uses public transportation (including taxicabs) to travel to work.

In short, the conclusion is inescapable that Shalimar is inextricably intertwined with the Fort Walton Beach Urbanized Area. Under such circumstances, it blinks reality to credit Gulf's claim that it would be providing first local transmission service to Shalimar, a community that receives service from numerous stations in the Ft. Walton Beach Urbanized Area.

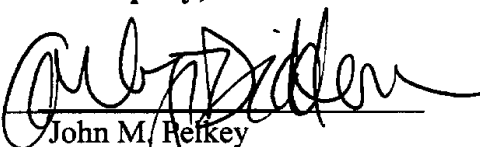
Conclusion

Grant of the proposal would cause more than 9,000 persons, constituting nearly 10% of the population within WPGG's coverage area, to be deprived of service including 722 persons who would lose their fourth service and 8,340 people who would lose their fifth service. Such a withdrawal of service is prima facie contrary to the public interest. At the same time, there would be no countervailing benefits as a result of the grant of the proposal. The area that would receive service for the first time is already well-served by more than five full-time services. Moreover, all the evidence suggests that Shalimar is not independent from the larger Fort Walton Beach Urbanized Area -- with the result that Gulf should not receive credit for providing first local transmission service to Shalimar.

Accordingly, for the aforementioned reasons, the proposed rule making should be denied.

Respectfully submitted,

**Qantum of Ft. Walton Beach
License Company, LLC**

By: 
John M. Refkey
Carly T. Didden

Its Attorneys

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Dated: August 2, 2004

TECHNICAL COMMENTS
MB DOCKET # 04-219
QANTUM OF FORT WALTON BEACH, LLC
WWAV RADIO STATION
SANTA ROSA BEACH, FLORIDA
July 2004

TECHNICAL STATEMENT

This technical statement and attached exhibits were prepared on behalf of Qantum of Fort Walton Beach, LLC. ("Qantum"), licensee of station WWAV, Channel 271C2, Santa Rosa Beach, Florida. Qantum herein submits comments in response to the Notice of Proposed Rule Making in MB Docket #04-219. The petitioner in MB Docket #04-219 is Gulf Coast Broadcasting Company, Inc. ("Gulf"), which seeks the downgrade of station WPGG, Channel 227C1, Evergreen, Alabama, to Channel 227C2 and the re-allotment of the downgraded channel to Shalimar, Florida.

Gulf in its Petition notes that the re-allotment and downgrade of Channel 227C1 to Shalimar, Florida, will result in the creation of both gain and loss areas, if the Commission were to implement the requested change. Further, Gulf claims that the proposed loss area will receive a "minimum of five signals".¹

DISCUSSION

The downgrade and re-allotment of WPGG to Shalimar, Florida, will result in the loss of service to 97,195 persons in 9,453.5 square kilometers, based on its licensed facility. The

1) Gulf Engineering statement at Page 2.

Channel 227C2 allotment to Shalimar, Florida, at the site proposed in the Notice, would provide 60 dBu service to 225,607 persons in 8,560.3 square kilometers.² As shown on Exhibit #1, the entire present 60 dBu contour of the licensed WPGG facility would be considered loss area. There is no area in common between the licensed WPGG and proposed Shalimar reference site.

Attached as Exhibit #2 is a map which depicts the WPGG licensed 60 dBu contour and 60 dBu service contours of numerous full-time FM stations which cross the licensed WPGG contour.³ The map indicates that as presently licensed WPGG is providing some fourth and fifth full-time service which will be lost if the channel is re-allotted to Shalimar. Within the designated loss area, WPGG is presently providing a fourth full-time service to 722 persons in 117.6 square kilometers. It also provides a fifth full-time service to 8,340 persons in 528.3 square kilometers.⁴ A tabulation of the stations which are depicted on the map is attached as Exhibit #3.⁵

Attached as Exhibit #4 is a map which depicts the theoretical service area of a maximum Class C2 facility at Shalimar, Florida. The map shows there are a minimum of five full-time FM

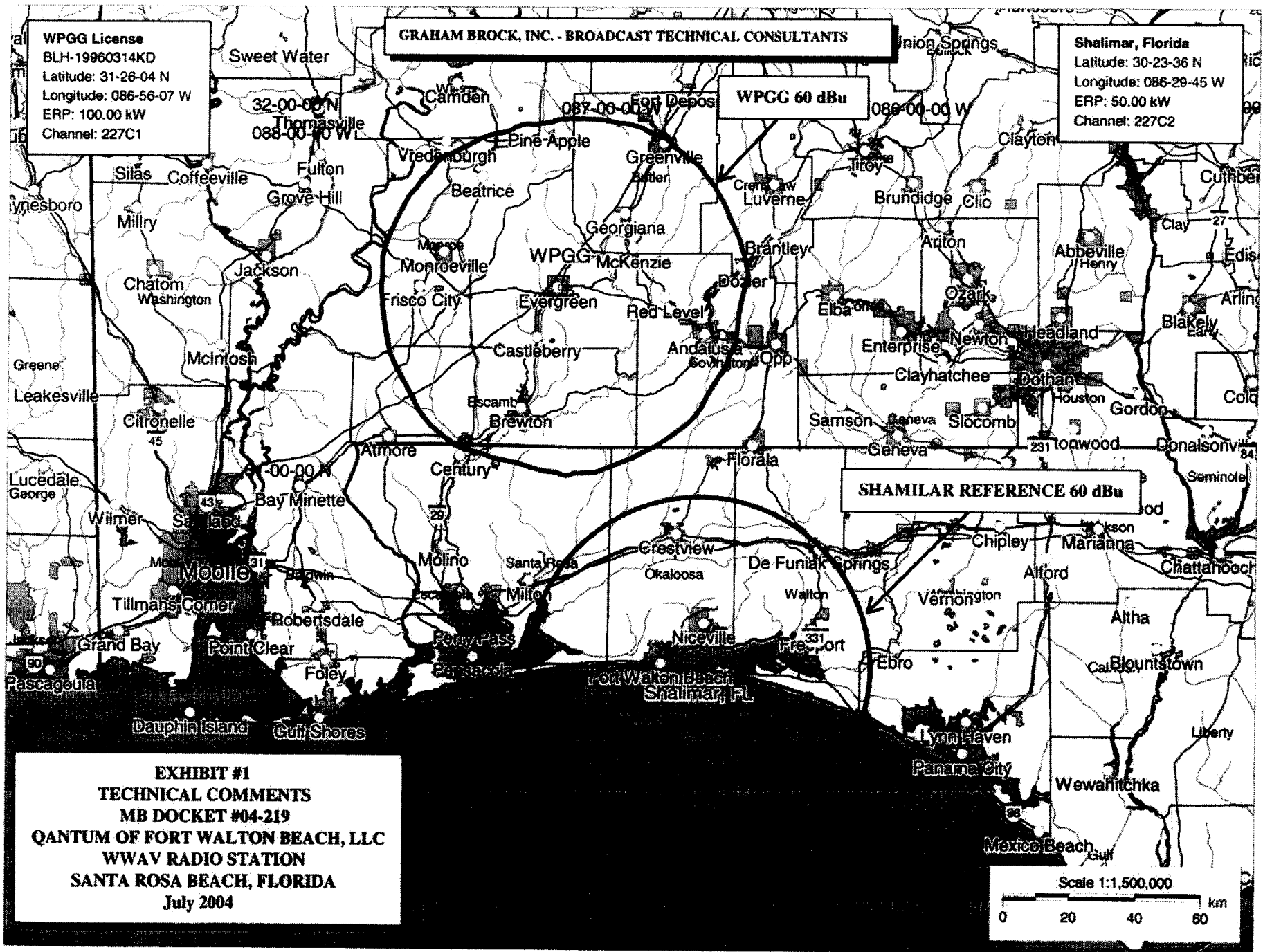
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- 2) Based on uniform terrain. Service radius 52.2 kilometers.
 - 3) The contours are based on licensed or permitted full service facilities. The contours of the other stations are based on uniform terrain and the pertinent reference distance radius based on Class for commercial stations (Class A's treated as either 3.0 or 6.0 kilowatt stations based on operating facilities; Class C and C0 facilities based on licensed power and height; all remaining Class stations based on maximum facilities). The radius of non-commercial FM stations were determined based on power and height of licensed or permitted facilities.
 - 4) There are no full-time Class A stations which provide a 0.5 mV/m service to the WPGG 60 dBu contour. Further, there are no full-time, or nighttime protected, AM stations which provide nighttime interference free service to the loss area.
 - 5) There are some additional stations which also provide service to portions of the WPGG licensed 60 dBu contour, which are not shown in order to minimize clutter on the map. However, none of these additional stations have contours which reach the under-served area.

services providing coverage to the entire Shalimar contour. A tabulation of the stations providing service to the gain area is attached as Exhibit #5.⁶

Based on this review, the re-allotment and downgrade of Channel 227C1 to Channel 227C2 at Shalimar, Florida, will result in a loss of service to 97,195 persons, of which 9,062 would have less than five full-time services. This is nearly 10% of the present service area population. The gain area is already adequately served by more than five full-time FM stations. The resulting increase of population WPGG would serve, if re-allotted to Shalimar, is in an area already receiving a sufficient number of FM services.

The foregoing was prepared on behalf of Qantum of Fort Walton Beach, LLC, by Graham Brock, Inc., its Technical Consultants. All information is true and accurate to the best of our belief and knowledge. Data relating to AM stations and FM allotments and facilities was extracted from the CDBS database. We assume no liability for errors or omissions in that database which may adverse to the information contained herein. All population data is from the United States 2000 Census.

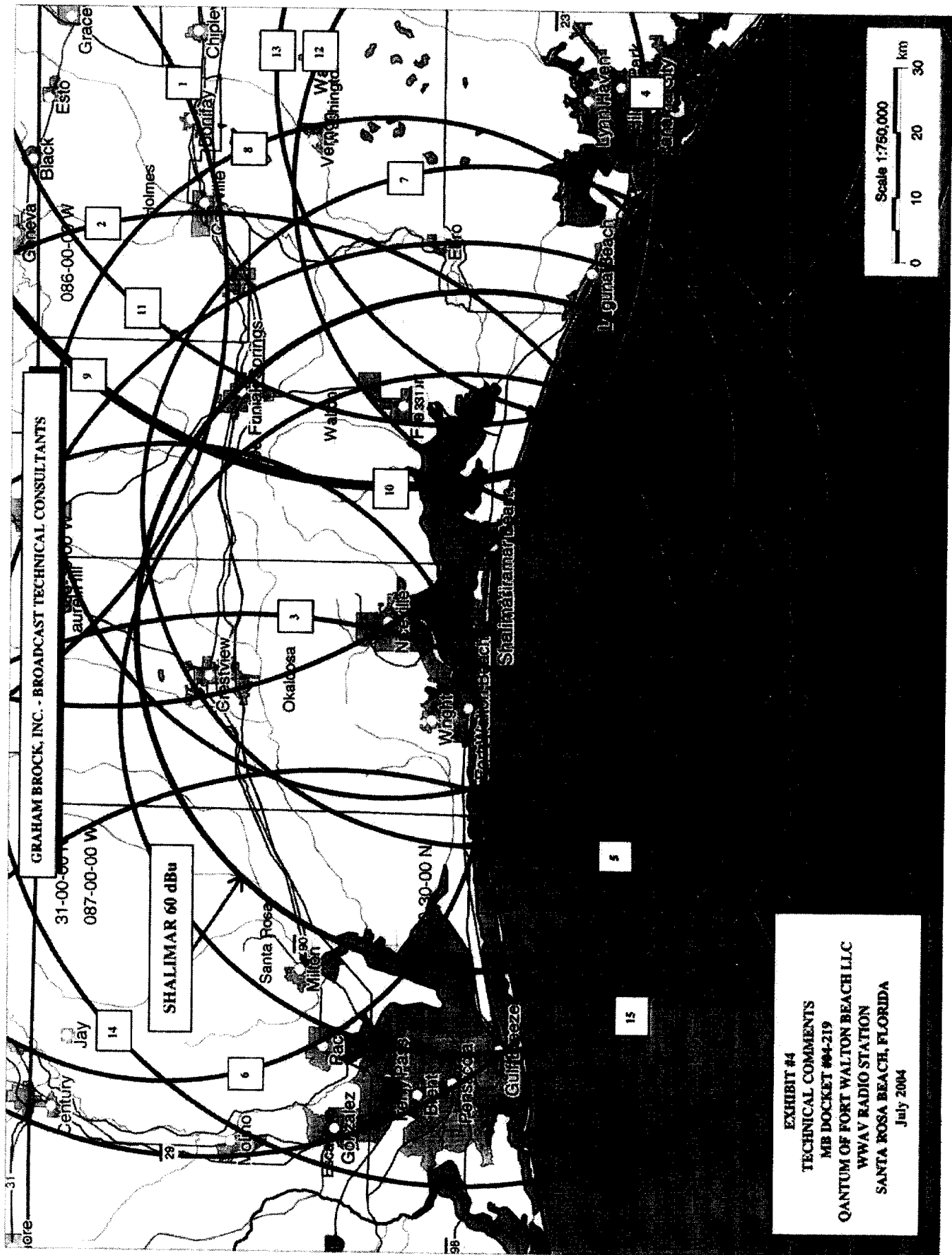
6) There are additional stations serving the gain area; they were however not shown since the area is already adequately served by five full-time FM stations.



TECHNICAL COMMENTS
MB DOCKET # 04-219
QANTUM OF FORT WALTON BEACH, LLC
WWAV RADIO STATION
SANTA ROSA BEACH, FLORIDA
July 2004

EXHIBIT #3

No.	Call Sign	Channel/Class	City/State
1	WELJ	215C2	Brewton, AL
2	WSTF	218A	Andalusia, AL
3	WHNB	233C2	Jackson, AL
4	WBAM-FM	255C1	Montgomery, AL
5	WFNU	266A	Brewton, AL
6	WZHT	289C	Troy, AL
7	WKMX	294C	Enterprise, AL
8	WFXX	299C2	Georgiana, AL
9	WAAZ-FM	284C1	Crestview, FL
10	WYCL	297C	Pensacola, FL
11	WMFC-FM	257C2	Monroeville, AL
12	WKNU	292A	Brewton, AL
13	WKXN	240A	Greenville, AL
14	WMXC	260C	Mobile, AL
15	WLWI-FM	222C	Montgomery, AL
16	WBFZ	287C2	Selma, AL
17	WALX	265C2	Selma, AL
18	WINL	253C1	Linden, AL
19	WYVC	272A	Camden, AL
20	WAAO-FM (CP)	279C3	Andalusia, AL
21	WDXZ	290A	Atmore, AL
22	WJDB-FM	238C3	Thomasville, AL
23	WQLD	282C1	Luverne, AL
24	WDJR	245C	Enterprise, AL
25	WXBM-FM	274C	Milton, FL
26	WTKE	251C1	Andalusia, AL
27	WAOQ	262A	Brantley, AL
28	WAPR	202C	Selma, AL
29	WMBV	220C1	Dixons Mills, AL
30	WQZX	232A	Greenville, AL
31	WTJT (CP)	211C2	Baker, FL
32	WPFL (CP)	286C3	Century, FL



TECHNICAL COMMENTS
MB DOCKET # 04-219
QANTUM OF FORT WALTON BEACH, LLC
WWAV RADIO STATION
SANTA ROSA BEACH, FLORIDA
July 2004

EXHIBIT #5

No.	Call Sign	Channel/Class	City/State
1	WKMXX	294C	Enterprise, AL
2	WAAZ-FM	284C1	Crestview, FL
3	WYCL	297C	Pensacola, FL
4	WDJR	245C	Enterprise, FL
5	WXBM-FM	274C	Milton, FL
6	WTJT (CP)	211C2	Baker, FL
7	WWAV	271C2	Santa Rosa Beach, FL
8	WMXZ	276C2	DeFuniak Springs, FL
9	WPAP-FM	223C	Panama City, Fl
10	WFSY	253C0	Panama City, FL
11	WPFM-FM	300C1	Panama City, FL
12	WASJ	286C2	Panama City Beach, FL
13	WRBA	240C2	Springfield, FL
14	WZNS	243C1	Fort Walton Beach, FL

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

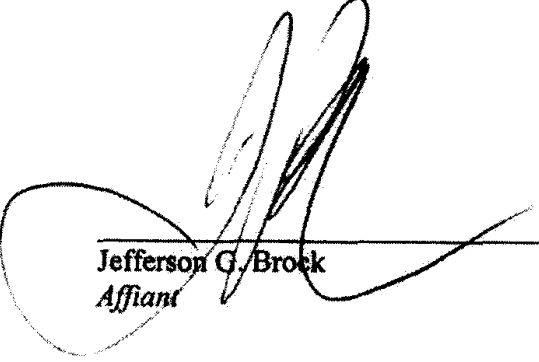
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Qantum of Fort Walton Beach, LLC, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

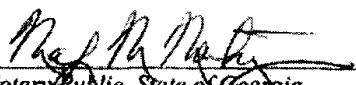
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 30th day of July, 2004.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 30th day of July, 2004.*



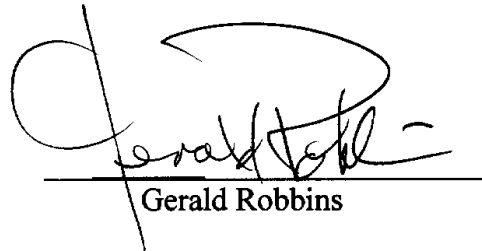
Notary Public, State of Georgia
My Commission Expires: September 3, 2007

CERTIFICATE OF SERVICE

I, Gerald Robbins, hereby certify that copies of the foregoing "Comments of Qantum of Fort Walton Beach License Company, LLC" were sent this 2nd day of August, 2004, by first class U.S. Mail, postage prepaid, to the following:

Marlene Dortch*
Secretary
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Gerald Robbins

* Via Hand Delivery